

# ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY - 8 1996

In the Matter of )

The Provision of Interstate and )  
International Interexchange )  
Telecommunications Service via )  
the "Internet" by Non-Tariffed, )  
Uncertified Entities )

America's Carriers Telecommunications )  
Association ("ACTA"), )

Petitioner )

Petition for Declaratory Ruling, )  
Special Relief, and Institution )  
of Rulemaking Against: )

VocalTec, Inc.; Internet Telephone )  
Company; Third Planet Publishing Inc.; )  
Camelot Corporation; Quarterdeck )  
Corporation; and Other Providers of )  
Non-Tariffed and Uncertified )  
Interexchange Telecommunications )  
Services, )

Respondents. )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RM No. 8775

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## COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice dated March 8, 1996, AT&T Corp. ("AT&T") respectfully files these comments in response to the Petition for Declaratory Ruling, Special Relief and Institution of Rulemaking (the "Petition") filed by America's Carriers Telecommunication Association ("ACTA").

In its Petition, ACTA requests that the Commission (1) issue a declaratory ruling "confirming its authority" over interstate and international telecommunications services using the Internet (pp. 4-5);

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(2) order the respondent computer software providers "to immediately stop their unauthorized provisioning of telecommunications services" until they file tariffs and obtain facilities authorizations (pp. 6-9); and

(3) institute a rulemaking proceeding to establish rules to govern the use of the Internet for providing telecommunications services (pp. 4-5, 9-10). As discussed below, these requests are at best premature, and in many respects seek regulation that is either beyond the statutory authority of the Commission, or unnecessary.

At the heart of ACTA's Petition is its claim that certain software companies are facilitating voice calling over the Internet without complying with Section 203 of the Communications Act (which requires carriers to file tariffs for their interstate communications service) and Section 214 of the Communications Act (which requires carriers to obtain authority to construct facilities for the transmission of interstate communications services). Contrary to ACTA's assertions (pp. 6-7), however, this claim is foreclosed by the fact that these statutory provisions apply only to "carriers," a category that plainly does not apply to computer software vendors.

Under the Telecommunications Act of 1996,<sup>1</sup> the Commission has certain regulatory authority with respect to "telecommunications carriers." Section 3(a) of the 1996 Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received" (emphasis supplied). Software vendors merely distribute the enabling software which allows customers to use their personal computers to initiate a voice call, which call is transmitted over the facilities of an Internet access provider and the Internet backbone. Because software vendors do not provide transmission, they do not fall within the statutory definition of a "telecommunications carrier."

Nor do software vendors fall under the definition of "carrier" under the Communications Act, which defines a carrier as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio . . . ."<sup>2</sup> Because software vendors do not provide transmission, they cannot be engaged in "communications by wire or radio" as defined under the

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act").

<sup>2</sup> Section 3(h) of the Communications Act, 47 U.S.C. § 153(h).

Communications Act,<sup>3</sup> and thus cannot be "carriers" subject to Title II of that Act.

Nevertheless, to the extent that ACTA is claiming that uneven application of telecommunications regulation could distort the market and encourage uneconomic bypass or the evasion of universal service support mechanisms, it has identified a legitimate concern. Telecommunications carriers providing services over the public switched network pay tariffed access charges, while Internet access providers and other enhanced services providers -- who make the same use of the public switched network -- do not.<sup>4</sup> As a result of this uneven application of access charges, competition in the marketplace is being impaired and economic signals are being distorted.

First, tariffed access charges today are loaded with subsidies and other uneconomic costs that far exceed the true costs of providing access services. This

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<sup>3</sup> Section 3(a) of the Communications Act, 47 U.S.C. § 153(a). ("Wire communication" or "communication by wire" means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission . . . .") (emphasis supplied).

<sup>4</sup> The Commission has granted temporary exemptions from payment of access charges to certain classes of users, including enhanced service providers. See MTS and WATS Market Structure, 97 F.C.C.2d 682 (1983); see also 47 C.F.R. § 69.2(m).

phenomenon alone produces significant cost penalties for some providers -- and unwarranted windfalls for others. The impact of inflated access charges is even more adverse when these fees are imposed on one class of service providers and not on other competing providers. Such a disparity distorts competition by skewing investment decisions between new and existing technologies on the artificial basis of which bears the access charge burden.

It is therefore imperative that the Commission embrace the related objectives of (i) cost-based access charges; (ii) assessed equitably on all users of the access network -- whether for local calling, access to interexchange services, or access to Internet and other information services. However, in light of the substantial loading of uneconomic costs in access charges today, moving immediately to require Internet and other enhanced services providers to pay those charges could impose costs on the public that outweigh the intended benefits. In particular, the drastic cost increases on Internet access providers that would result from imposing access charges at their current levels could significantly depress demand for these emerging services and inhibit their future development, contrary to the intended purpose of the 1996 Act.<sup>5</sup>

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<sup>5</sup> In the 1996 Act, Congress found that "[t]he Internet and other interactive computer services have

The Commission has indicated its intent to address these matters in the context of its on-going Joint Board proceeding to reform the collection and disbursement of universal service support subsidies,<sup>6</sup> and in its impending rulemaking proceeding to address broad access charge reform.<sup>7</sup> These proceedings should result in the

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(footnote continued from previous page)

flourished, to the benefit of all Americans, with a minimum of government regulation," and declared it to be the policy of the United States "to promote the continued development of the Internet and other interactive computer services and other interactive media; [and] to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." See 1996 Act at Sections 230(a)(4), 230(b)(1) and 230(b)(2).

<sup>6</sup> See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking, released March 8, 1996.

<sup>7</sup> See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, released April 19, 1996, para. 3 ("This rulemaking is one of a number of interrelated proceedings designed to advance competition, to reduce regulation in telecommunications markets and at the same time to advance and preserve universal service to all Americans. We are especially cognizant of the interrelationship between this proceeding, our recently initiated proceeding to implement the comprehensive universal service provisions of the 1996 Act and our upcoming proceeding to reform our Part 69 access charge rules. . . . [W]e intend to conduct and conclude all of these proceedings in a comprehensive, consistent, and expedited fashion"). See also Price Cap Performance Review for Local Exchange Carriers, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd. 858 (1995); Fourth Further Notice of Proposed Rulemaking, 10 FCC Rcd. 13659 (1995).

removal of subsidies and other uneconomic costs from access prices -- reducing those charges to their true economic costs -- and the funding of universal service in an efficient and competitively neutral manner.

AT&T urges the Commission and the Joint Board to conclude these proceedings promptly, as the language and the purpose of the 1996 Act contemplate. Assuming such prompt resolution, it may be possible to await the outcome of these proceedings before addressing the access charge exemption that currently applies to Internet and other information service providers. If prompt resolution of these broader proceedings is not forthcoming, however, or if the pace of technological change becomes even greater, the Commission may need to act more quickly to eliminate the serious distortions created by the imposition of unequal obligations to pay access fees.

ACTA's Petition thus underscores the pressing need for the Commission to move expeditiously to effect access charge reform, as the Commission has proposed to do. Either as a result of those proceedings, or in the context of a separate proceeding (in the event that broader access charge reform is not forthcoming) the Commission can and should take steps to ensure that all users of access -- including Internet and other interactive computer service providers -- pay the costs associated with their use. This will produce fair

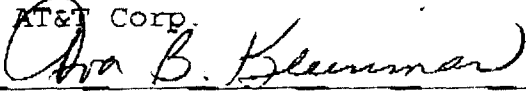
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competition among all service providers, the lowest possible prices for consumers, and economic signals that best promote innovation and new investment.

Respectfully submitted,

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May 8, 1996



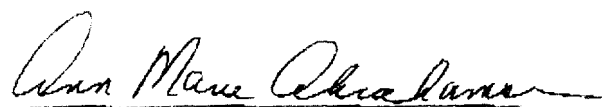
CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 8th day of May, 1996, a copy of the foregoing "Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

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